

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: MARCIA CAMPBELL,

Debtor.

Chapter 7

Case No. 17-bk-13518 (CGM)

NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY

PLEASE TAKE NOTICE that Sylvester Derrick Deacon (“Mr. Deacon”), individually and derivatively on behalf of DVM Second Chance LLC (“DVM”), by and through his undersigned counsel, shall move before the Honorable Cecelia G. Morris, Chief United States Bankruptcy Judge, at the United States Bankruptcy Court, One Bowling Green, New York, NY 10004, in Courtroom 617 on November 8 at 9:30 a.m. or as soon thereafter as counsel may be heard, on his motion (the “Motion”) for relief from the automatic stay with respect to the pending action *Deacon, et al. v. Campbell*, 28498/2016E (Supreme Court, County of The Bronx) and granting such other and further relief as this Court deems just and proper under the circumstances.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief sought in the Motion shall be in writing, conform to the Bankruptcy Rules and Local Bankruptcy Rules for the Southern District of New York, shall be filed with the Bankruptcy Court (i) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (ii) by all other parties in interest, on a CD-ROM, in text-searchable portable documents format (PDF), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399,

and upon Rickner PLLC, 233 Broadway, Suite 2220, New York, NY 10279, counsel for movants, so as to be received by no later than October 31, 2018.

PLEASE TAKE FURTHER NOTICE that if no objection to the Motion is received by the Objection Deadline, such Motion shall be deemed unopposed, and the Bankruptcy Court may enter an order granting such Motion without a hearing.

PLEASE TAKE FURTHER NOTICE that the hearing may be adjourned from time-to-time without additional notice other than said adjournment being announced in open Court.

Dated: New York, New York
October 5, 2018

Rickner PLLC

By: /s/

Rob Rickner

233 Broadway Suite 2220
New York, New York 10279
Phone: (212) 300-6506
Fax: (888) 390-5401
Attorney for Plaintiff

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: MARCIA CAMPBELL,

Debtor.

Chapter 7

Case No. 17-bk-13518 (CGM)

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND DECLARATION OF
ROB RICKNER, ESQ. IN SUPPORT**

Sylvester Derrick Deacon (“Mr. Deacon”), individually and derivatively on behalf of DVM Second Chance LLC (“DVM”) files this motion to lift the automatic stay for cause under 11 U.S.C. § 362(d)(1). In support of this motion, Rob Rickner, Esq., hereby declares:

1. I am the owner of Rickner PLLC, the attorney for Sylvester Derrick Deacon (“Deacon”) individually and derivatively on behalf of DVM Second Chance LLC (“DVM”) in both this bankruptcy proceeding and in *Deacon, et al. v. Campbell*, 28498/2016E (Supreme Court, County of The Bronx) (the “Fraud Action”), and submit the facts in this Declaration and Motion based on personal knowledge.

2. DVM filed an adversary proceeding on May 12, 2018, seeking to have the Fraud Action exempted from discharge in bankruptcy under 11 U.S.C. § 523, and to deny discharge of the entire bankruptcy action under 11 U.S.C. § 727. An Order granting the relief requested in the adversary proceeding was granted on September 12, 2018 and entered on this docket on September 14, 2018. A copy of the Order is attached as Exhibit A. No appeal was filed and this Order is final.

3. Plaintiff now asks that this Court to lift the automatic stay for cause. Multiple *Sonnax* factors weigh in support of lifting the stay. *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1286 (2d Cir. 1990).

- a. “(1) whether relief would result in a partial or complete resolution of the issues”:
The entire dispute between DVM and Campbell, the debtor, would be resolved through the Fraud Action, except for any debt collection.
- b. “(2) lack of any connection with or interference with the bankruptcy case”: The Fraud Action will not interfere with this bankruptcy. The Fraud Action will not be discharged in this bankruptcy, pursuant to the Order, so the two actions are effectively disconnected, except to the extent assets from the bankruptcy can satisfy any judgment in the Fraud Action.
- c. “(3) whether the other proceeding involves the debtor as a fiduciary”: The debtor, Campbell, committed the acts in the Fraud Action while acting as a fiduciary for DVM.
- d. “(10) the interests of judicial economy and the expeditious and economical resolution of litigation”: Given that the adversary proceeding has resolved, and the Fraud Action is through discovery and ready for trial, it would be most efficient to handle the Fraud Action in the Supreme Court, County of The Bronx.
- e. “(11) whether the parties are ready for trial in the other proceeding”: The Fraud Action is through discovery. The only remaining tasks are filing a note of issue (which certifies the case as trial ready), and then trial.
- f. “(12) impact of the stay on the parties and the balance of harms”: Given that the Fraud Action will not be discharged in this bankruptcy, the case will go forward

either when the stay is lifted or when the bankruptcy proceedings are finished. It will not be disposed of completely. In contrast, DVM would be prejudiced by any continued delay.

4. Therefore, the best and most efficient resolution is to allow the Fraud Action to go forward to trial and judgment; there is no need to wait until the bankruptcy proceedings have been completed to restart the litigation.

5. No prior similar relief has been requested.

I hereby declare under penalty of perjury the foregoing factual statements are true and correct.

WHEREFORE, DVM respectfully requests that the Court issue an Order, a proposed form of which is attached as Exhibit B, pursuant to 11 U.S.C. § 362(1) granting DVM relief from the automatic stay in order to resolve the Fraud Action, as hereinabove requested, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
October 5, 2018

Rickner PLLC

By: /s/

Rob Rickner

233 Broadway Suite 2220
New York, New York 10279
Phone: (212) 300-6506
Fax: (888) 390-5401
Attorney for Plaintiff

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: MARCIA CAMPBELL,

Debtor.

Chapter 7

Case No. 17-bk-13518 (CGM)

**SYLVESTER DERRICK DEACON
derivatively on behalf of DVM SECOND
CHANCE LLC,**

Plaintiff,

Chapter 7

**Adversary Proceeding No.
18-ap-01542 (CGM)**

vs.

MARCIA CAMPBELL,

Defendant.

DEFAULT JUDGMENT AGAINST DEFENDANT MARCIA CAMPBELL

Upon the motion (the "Motion") of plaintiff Sylvester Derrick Deacon derivatively on behalf of DVM Second Chance LLC (the "Plaintiff") for a default judgment against defendant Marcia Campbell pursuant to Rule 55 of the Federal Rules of Civil Procedure (the "Civil Rules"), made applicable by Rule 7055 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and upon the declaration of Rob Rickner, Esq in support of the Motion; and this Court having jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334; and consideration of the Motion being a core proceeding under 28 U.S.C. § 157(b)(2)(I); and venue being proper in this district pursuant to 28 U.S.C. § 1409(a); and due and proper notice of the Motion having been provided; and it appearing no other or further notice need be provided; and this Court having determined the legal and factual bases set forth in the Motion establish just

cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY FOUND AND DETERMINED:

- A. Plaintiff's Amended Complaint, filed May 18, 2018 [Docket No. 3] ("Complaint") and the summons issued by the Clerk of this Court on May 14, 2018 [Docket No. 2] were properly served upon Defendant.
- B. Defendant failed to timely file an answer or motion in response to the Complaint and summons.
- C. Defendant has failed to establish a meritorious defense to the claims in the Complaint.
- D. Defendant obtained money through false pretenses, a false representation, or actual fraud, under 11 U.S.C. § 523(2)(a), resulting in a debt being litigated in *Deacon, et al. v. Campbell*, 28498/2016E (Supreme Court, County of The Bronx) (the "Fraud Action").
- E. Defendant committed a fraud or embezzlement while acting as a fiduciary under 11 U.S.C. § 523(4), resulting in a debt being litigated in the Fraud Action.
- F. Defendant knowingly made a false account under 11 U.S.C. § 727(4) during these bankruptcy proceedings, related to the Fraud Action.

NOW THEREFORE, IT IS HEREBY ORDERED:

- 1. The Motion to Vacate the Entry of Default [Docket No. 11] is denied; and
- 2. The Motion to Enter a Default Judgment is granted; and
- 3. Pursuant to Bankruptcy Code 11. U.S.C. § 523, the claims in the Fraud Action will not be discharged in this bankruptcy; and
- 4. Pursuant to Bankruptcy Code 11. U.S.C. § 727, Defendant will not be granted a discharge in her chapter 7 bankruptcy proceedings; and

5. This Court shall retain jurisdiction to interpret and enforce the terms of this order.

Dated: September 12, 2018
Poughkeepsie, New York



/s/ Cecelia G. Morris

Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: MARCIA CAMPBELL,

Debtor.

Chapter 7

Case No. 17-bk-13518 (CGM)

ORDER LIFTING THE AUTOMATIC STAY

Upon the motion (the "Motion") of Sylvester Derrick Deacon derivatively on behalf of DVM Second Chance LLC ("DVM") for an Order pursuant 11 U.S.C. § 362(1) granting relief from the automatic stay so that DVM and Mr. Deacon can continue litigation of *Deacon, et al. v. Campbell*, 28498/2016E (Supreme Court, County of The Bronx) (the "Fraud Action"); and due and proper notice of the Motion having been provided; and it appearing no other or further notice need be provided; and this Court having determined the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED: The automatic stay is lifted with respect to the pending action *Deacon, et al. v. Campbell*, 28498/2016E (Supreme Court, County of The Bronx) and this action may proceed forward through litigation and trial.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: MARCIA CAMPBELL,

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Case No. 17-bk-13518 (CGM)

FRCP 55 AFFIDAVIT

As attorney for movant admitted to practice before this Court, I represent that upon information and belief, the debtor is not an infant, incompetent, or in the military.

Dated: New York, New York
October 5, 2018

Rickner PLLC

By: /s/

Rob Rickner

233 Broadway Suite 2220
New York, New York 10279
Phone: (212) 300-6506
Fax: (888) 390-5401
Attorney for Plaintiff